

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of this October 16, 2017 by and between Jerry W. Jackson and Charles M. Schmidt ("Petitioners"), individuals, and the City of Lincoln ("City"), a California municipality, who agree as follows:

1. **Recitals.** This Settlement Agreement is made with reference to the following background recitals.
 - 1.1. On November 12, 2013, City's Council adopted Ordinance No. 888B enacting new single-family residential water rates effective 2014 through 2017 ("Water Rates"). The Water Rates included five tiers of volumetric water rates.
 - 1.2. In March 2017, the City suspended its Tier 4 and Tier 5 rates and all consumption that would have otherwise been charged at Tier 4 and Tier 5 rates (i.e. > 21 thousand gallons ("kgals") / month) is now charged at the Tier 3 rate.
 - 1.3. On April 25, 2017, Petitioners filed a lawsuit against City in Placer County Superior Court titled *Jackson, et al. v. City of Lincoln*, Case No. SCV0039384 ("Pending Lawsuit"). Petitioners filed the lawsuit on behalf of a putative class of City single-family residential water service customers (hereinafter "Customer(s)") and alleged the Water Rates as charged by City for the period of February 2016 through present violated Proposition 218 (Cal. Const., art. XIII D, § 6). The lawsuit demanded, among other things, that the City issue refunds of the volumetric water rates collected from the putative class allegedly in violation of Proposition 218 from February 2016 to the date of judgment.
 - 1.4. On September 25, 2017, the parties agreed at mediation to resolve the Pending Lawsuit on the terms set forth in this agreement.
2. **Water Rate Refunds.** City shall create a water rate refund fund and issue refunds to current and former Customers, including Petitioners, as set forth in this agreement.
 - 2.1. **Amount of Refunds for February 2016 to March 2017.** For February 2016 through March 2017, the base formula the City shall use for determining each refund shall be the volumetric amount each Customer paid for water under Tiers 4 and 5 of the Water Rates, less the City's cost of service for the water. For purposes of this agreement, the City's cost of service for this period shall be calculated as \$2.76 per kgal. City and Petitioners agree that no refunds are due to any Customer using water in Tier 3 for this time period. The City shall issue refunds for this time period within 90 days of entry of dismissal described in Section 3.4.
 - 2.2. **Amount of Refunds for April 2017 until a New Tier 3 Rate Is Adopted.** For April 2017 through the month in which a new Tier 3 rate becomes effective, the base formula the City shall use for determining each refund due to those charged at Tier 3 of the Water Rates shall be the amount each Customer paid for water in excess of 21,000 gallons and in excess of the \$2.76 per kgal cost of water. The

City shall issue refunds for this time period within 90 days of City's adoption of new water rates.

- 2.3. **City Cost of Service.** The cost of service referenced in this agreement is a negotiated sum and is not intended to be binding on the City for any purposes other than this agreement.
- 2.4. **Attorney Fees Paid from Water Rate Refund Fund.** The City shall reduce the total amount of the water rate refund fund by the attorney fees payment in Section 3.3. Because the month in which a new Tier 3 rate will become effective and the amount of future water consumption are unknown, the total amount of the refunds due under Section 2.2 is unknown. In an effort to distribute the attorney fees payment equitably, the City will reduce the refund total in Section 2.1 by the \$150,000 attorney fees payment. Nothing herein shall affect the timing of the attorney's fee payment set forth in Section 3.3.
- 2.5. **Refund Fund Calculations.** The City's refund fund calculations for water rate refunds under section 2.1 are reflected on Exhibit A. For refunds under section 2.2, the City shall prepare, and provide to Petitioners' attorneys, an updated refund fund calculation within 30 days of the date a new Tier 3 rate becomes effective.
- 2.6. **Individual Refund Calculations.** The City shall provide an individual Customer refund calculation in writing to any Customer or former water service Customer who requests one.
- 2.7. **City Payment of Refunds.** For current Customers who are due \$1,000 or less in refunds shall be issued as a bill credit. Customers who are entitled to refunds in excess of \$1,000 shall receive a refund by check. For former Customers and for Customers who cancel water service with a positive refund balance, the City shall issue a refund check and employ the City's existing procedures and policies for issuing refunds to said Customers.

City shall include a bill insert with the first bill reflecting the credit that explains that the credit resulted from a Proposition 218 refund. The City shall include the same insert with each refund check.

3. Resolution of Pending Lawsuit

- 3.1. **Waiver and Release of Refund Claims.** Petitioners, on behalf of themselves, but not on behalf of putative class members, release and forever discharge the City and its employees, administrators, officers, directors, managers, attorneys, agents, representatives, predecessors, successors, parents, subsidiaries, co-venturers, and any affiliated entities of all claims for water rate refunds that were asserted against the City in the Pending Litigation relating to and arising out of the Water Rates. For the sake of clarity, this release does not encompass (a) any claims arising from or related to excess reserves generated from the fees and charges in the Water Rates or (b) any claims whatsoever as to putative class members.

The release is a full and final release applying to all released matters described in this section. The parties waive all rights or benefits which they may now have or in the future may have under the terms of section 1542 of the Civil Code of the California, which reads:

A general release does not extend to the claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Petitioners understand and accept the risk that they may have substantial rights, claims, damages, demands, liabilities, actions or defenses arising out of or related to the Pending Lawsuit, existing or arising on or before the effective date of this Settlement Agreement, that have not yet manifested or that are presently unknown, or that have not yet been identified, and the parties nevertheless intend to and do deliberately release these possible future rights, claims, damages, demands, liabilities, actions or defenses.

Petitioners agree not to file or prosecute against City any cause of action, suit, or claim respecting any of the claims released by this agreement.

- 3.2. **Attorneys Disqualified from Future Lawsuits.** Petitioners' attorneys Eric Benink, Benjamin Benumof, and Krause, Kalfayan, Benink & Slavens, LLP are disqualified from, and covenant not to file or pursue, any claim, lawsuit, or other proceeding against the City related to the Water Rates.
- 3.3. **Attorney Fees Payment.** City shall pay Petitioners' attorneys \$150,000 within 30 days of entry of the dismissal described in Section 3.4. Consistent with Section 2.4, the payment to Petitioners' attorneys shall be paid solely from the water rate refund fund created by the City's refund calculations as described in section 2.4.
- 3.4. **Retention of Jurisdiction and Dismissal of Pending Lawsuit.** Within ten (10) court days of the full execution of this Settlement Agreement, the parties shall execute a stipulation substantially in the form attached hereto as Exhibit B that requests that the Court (a) retain jurisdiction pursuant to Code of Civil Procedure section 664.6 and (b) dismiss this entire action with prejudice as to the Petitioners and without prejudice as to the putative class. The parties agree that Petitioners may file the Declaration of Eric J. Benink in Support of Request for Dismissal substantially in the form attached hereto as Exhibit C together with the stipulation. If the Court declines to enter the dismissal as stipulated, or if the Court modifies any term of this Settlement Agreement, then this settlement shall immediately become null and void.

4. **General Provisions.**

- 4.1. **Enforcement of Agreement.** The parties agree that this agreement is enforceable and binding as of the date first written above and may be enforced in any court of

competent jurisdiction, including by way of motion pursuant to Code of Civil Procedure section 664.6.

- 4.2. **Representations and Warranties Regarding Execution.** Each party to this agreement warrants and represents that in executing this agreement, it has had the opportunity to consult with an attorney of its choice; that the terms of this agreement have been read and its consequences, including the risks, complications and costs, are completely understood; that it fully understands the terms of this agreement; and that each party is fully authorized to enter into this agreement. Each party further acknowledges and represents that, in executing this agreement, it has not relied on any inducements, promises, or representations made by the opposing party or any person representing or serving the opposing party, except as specifically provided herein; and that each has signed this agreement voluntarily, without any duress or undue influence on the part of, or on behalf of, any party. Each person signing this agreement on behalf of a party also represents and warrants that he or she has the authority and capacity to make the releases and promises set forth in this agreement and that each party is the owner of and has not assigned or hypothecated any of the claims encompassed by this agreement, whether known or unknown.
- 4.3. **Costs and Attorney Fees.** Except as provided in Section 3.3, each party shall bear its own attorney fees, costs and expenses arising out of or connected with the Pending Lawsuit.
- 4.4. **Integration.** This agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this agreement. The parties agree that upon execution of this Settlement Agreement, this agreement supersedes and replaces the Binding Settlement Agreement dated September 25, 2017 previously executed by the parties. Each party acknowledges and represents that, in releasing, discharging and settling certain claims and in entering into this agreement, it has not acted in reliance upon any promise, covenant, representation, warranty, warning or inducement whatsoever, express or implied, except as contained in this agreement.
- 4.5. **Governing Law.** Except as otherwise required by law, this agreement shall be interpreted, governed by, and construed under the laws of the State of California. Any action to enforce or interpret this agreement shall be brought in the Superior Court for the County of Placer.
- 4.6. **Cooperation.** Each party to this agreement agrees to do all things that may be necessary, including, without limitation, the preparation and execution of documents which may be required hereunder, in order to implement and effectuate this agreement.

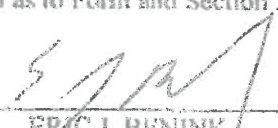
- 4.7. **Joint Drafting of Agreement.** The parties agree this agreement has been jointly drafted and shall not be construed in favor of, or against, any party by reason of the extent to which any party or its counsel participated in the drafting of this agreement.

For Petitioners:



PERRY W. JACKSON

CHARLES M. SCHMIDT


Approved as to Form and Section 3.2:


ERIC J. BENINK
Krause, Kalfayan, Benink & Slaven, LLP

Approved as to Form and Section 3.2:


BENJAMIN T. BENIMOF
Krause, Kalfayan, Benink & Slaven, LLP

For City:


PETER GILBERT
Mayor

Approved as to Form:


BRUCE CLINE
Interim City Attorney

- Exhibit A: City Refund Fund Calculations for February 2016 to March 2017
- Exhibit B: Stipulation re: Retention of Jurisdiction Pursuant to C.C.P. § 664.6 and Dismissal: [Proposed] Order Thereon [unexecuted]
- Exhibit C: Declaration of Eric J. Benink in Support of Request for Dismissal [C.R.C. 3.770] [unexecuted]

- 4.7. **Joint Drafting of Agreement.** The parties agree this agreement has been jointly drafted and shall not be construed in favor of, or against, any party by reason of the extent to which any party or its counsel participated in the drafting of this agreement.

For Petitioners:

<hr/> JERRY W. JACKSON	<hr/> <i>Charles M. Schmidt</i> CHARLES M. SCHMIDT
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Approved as to Form and Section 3.2:

Approved as to Form and Section 3.2:

<hr/> ERIC J. BENINK Krause, Kalfayan, Benink & Slavens, LLP	<hr/> BENJAMIN T. BENUMOF Krause, Kalfayan, Benink & Slavens, LLP
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For City:

Approved as to Form:

<hr/> PETER GILBERT Mayor	<hr/> BRUCE CLINE Interim City Attorney
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- Exhibit A: City Refund Fund Calculations for February 2016 to March 2017
- Exhibit B: Stipulation re: Retention of Jurisdiction Pursuant to C.C.P. § 664.6 and Dismissal; [Proposed] Order Thereon [unexecuted]
- Exhibit C: Declaration of Eric J. Benink in Support of Request for Dismissal [C.R.C. 3.770] [unexecuted]

EXHIBIT A

Settlement Agreement - Exhibit A
Refund Calculation Summary for February 2016 to March 2017

Jackson, et al. v. City of Lincoln

Schedule	Tier	Month	Units (Kgals)	Collected	Base Refund Amount	Adjusted Refund Amount	Unrefunded Base Amount
2015-2016	4	2	538	\$3,868.22	\$2,383.34	\$1,988.34	\$1,484.88
		3	588	\$4,227.72	\$2,604.84	\$2,173.13	\$1,622.88
		4	2,911	\$20,930.09	\$12,895.73	\$10,758.48	\$8,034.36
		5	5,743	\$41,292.17	\$25,441.49	\$21,224.99	\$15,850.68
		6	16,883	\$121,388.77	\$74,791.69	\$62,396.23	\$46,597.08
		4 Total	26,663	\$191,706.97	\$118,117.09	\$98,541.18	\$73,589.88
	5	2	57	\$573.99	\$416.67	\$347.61	\$157.32
		3	361	\$3,635.27	\$2,638.91	\$2,201.56	\$996.36
		4	375	\$3,776.25	\$2,741.25	\$2,286.93	\$1,035.00
		5	774	\$7,794.18	\$5,657.94	\$4,720.23	\$2,136.24
		6	2,952	\$29,775.60	\$21,628.08	\$18,043.59	\$8,147.52
		5 Total	4,519	\$45,555.29	\$33,082.85	\$27,599.93	\$12,472.44
2015-2016 Total			31,182	\$237,262.26	\$151,199.94	\$126,141.11	\$86,062.32
2016-2017	4	7	33,107	\$264,524.93	\$173,149.61	\$144,453.00	\$91,375.32
		8	31,073	\$248,273.27	\$162,511.79	\$135,578.21	\$85,761.48
		9	23,429	\$187,197.71	\$122,533.67	\$102,225.79	\$64,664.04
		10	8,024	\$64,111.76	\$41,965.52	\$35,010.45	\$22,146.24
		11	1,611	\$12,871.89	\$8,425.53	\$7,029.14	\$4,446.36
		12	859	\$6,863.41	\$4,492.57	\$3,748.00	\$2,370.84
		1	799	\$6,384.01	\$4,178.77	\$3,486.21	\$2,205.24
		2	623	\$4,977.77	\$3,258.29	\$2,718.28	\$1,719.48
		3	403	\$3,219.97	\$2,107.69	\$1,758.38	\$1,112.28
		4 Total	99,928	\$798,424.72	\$522,623.44	\$436,007.46	\$275,801.28
	5	7	10,755	\$118,466.91	\$88,783.11	\$74,068.81	\$29,683.80
		8	8,305	\$91,576.97	\$68,655.17	\$57,276.74	\$22,921.80
		9	5,370	\$59,304.90	\$44,483.70	\$37,111.28	\$14,821.20
		10	1,698	\$19,398.64	\$14,712.16	\$12,273.87	\$4,686.48
		11	346	\$4,096.36	\$3,141.40	\$2,620.77	\$954.96
		12	263	\$2,968.11	\$2,242.23	\$1,870.62	\$725.88
		1	574	\$6,446.58	\$4,862.34	\$4,056.49	\$1,584.24
		2	402	\$4,543.80	\$3,434.28	\$2,865.11	\$1,109.52
		3	102	\$1,213.62	\$932.10	\$777.62	\$281.52
		5 Total	27,815	\$308,015.89	\$231,246.49	\$192,921.30	\$76,769.40
2016-2017 Total			127,743	\$1,106,440.61	\$753,869.93	\$628,928.76	\$352,570.68
Grand Total			158,925	\$1,343,702.87	\$905,069.87	\$755,069.87	\$438,633.00

EXHIBIT B

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Attorneys for Petitioners and Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF PLACER

JERRY W. JACKSON, an individual, on
behalf of himself and all others similarly
situated; and CHARLES M. SCHMIDT, an
individual, on behalf of himself and all others
similarly situated,

Petitioners and Plaintiffs,

v.

CITY OF LINCOLN, a general law city; and
DOES 1-10,

Respondents and Defendants.

Case No.: SCV0039384

**STIPULATION RE: RETENTION OF
JURISDICTION PURSUANT TO C.C.P. §
664.6 AND DISMISSAL; [PROPOSED]
ORDER THEREON**

[CLASS ACTION]

WHEREAS Plaintiffs and Petitioners Jerry W. Jackson and Charles M. Schmidt
("Petitioners") and the City of Lincoln ("City") have executed a written Settlement Agreement
dated October 16, 2017;

WHEREAS the Settlement Agreement provides for the Court to retain jurisdiction over
the parties and to enforce the terms of the Settlement Agreement pursuant to Code of Civil
Procedure section § 664.6;

WHEREAS the Settlement Agreement provides that the Petitioners request that this entire
action be dismissed with prejudice as to themselves and without prejudice as to the putative class;
and

1 WHEREAS Petitioners have filed herewith, a Declaration of Eric J. Benink in Support of
2 Request for Dismissal pursuant to California Rules of Court, Rule 3.770, which requires a
3 dismissal of a putative class action to be supported by a declaration of certain facts.

4 WHEREFORE, IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES
5 that:

6 1. The Court shall retain jurisdiction over the parties and to enforce the terms of the
7 Settlement Agreement pursuant to C.C.P. § 664.6;

8 2. The Court shall dismiss this entire action with prejudice as to Petitioners and
9 without prejudice as to the putative class.
10

11 SO STIPULATED.
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13 DATED: _____

Jerry W. Jackson, Petitioner

15 DATED: _____

Charles M. Schmidt, Petitioner

17 DATED: 10-19-2017
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Mayor Peter Gilbert
for Defendant City of Lincoln

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ORDER

Upon reviewing the foregoing stipulation and the Declaration of Eric J. Benink in Support of Request for Dismissal of Action and Exhibit 1 thereto (Settlement Agreement) and good cause appearing thereon,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

(1) The Court shall retain jurisdiction over the parties and to enforce the terms of the Settlement Agreement pursuant to Code of Civil Procedure section 664.6.

(2) This entire action is hereby dismissed with prejudice as to Petitioners Jerry W. Jackson and Charles M. Schmidt, and without prejudice as to the putative class.

SO ORDERED.

DATED: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT C

Eric J. Benink, Esq. (SBN 187434)
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Fax: (619) 232-4019

Attorneys for Petitioners and Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

JERRY W. JACKSON, an individual, on
behalf of himself and all others similarly
situated; and CHARLES M. SCHMIDT, an
individual, on behalf of himself and all others
similarly situated,

Petitioners and Plaintiffs,

v.

CITY OF LINCOLN, a general law city; and
DOES 1-10,

Respondents and Defendants.

Case No.: SCV0039384

**DECLARATION OF ERIC J. BENINK IN
SUPPORT OF REQUEST FOR
DISMISSAL [C.R.C. 3.770]**

[CLASS ACTION]

I, Eric J. Benink, declare as follows:

1. I am one of the attorneys for Petitioners and Plaintiffs ("Petitioners") in the above-entitled action. I have personal knowledge of the facts stated below and if called upon, I could and would testify competently thereto.

2. This action was filed on April 25, 2017 as a putative class action seeking refunds for a class of residential water ratepayers in the City of Lincoln ("City") who Petitioners claim paid tiered rates that exceeded the true cost of water during the period February 9, 2016 through date of judgment. More specifically, Petitioners allege that City's water rates at tiers 3, 4, and 5 exceed the true cost of water in violation of Proposition 218 (Cal. Const. art. XIII D, § 6, subd.

1 (b)(1) and (3).) February 9, 2016 marks the date one year prior to the date Plaintiffs submitted a
2 refund claim with the City in compliance with the Government Claims Act.

3 3. On September 25, 2017, the parties participated in a mediation at JAMS in
4 Sacramento before Judge Cecily Bond (Ret.) Participating in the mediation on Petitioners' side
5 were both Petitioners, two members of a local ratepayer advocacy group called LIFT, my co-
6 counsel Ben Benumof, and myself. Participating on the City's side were two outside attorneys,
7 the Interim City Attorney, the City Manager, the Public Services Director, the City Engineer, and
8 the City Director of Support Services. The mediation lasted from 9:00 a.m. to approximately
9 7:00 p.m.

10 4. At all times, the negotiations were arms-length and adversarial. The mediation
11 concluded with the execution of a binding term sheet, which required formal City Council
12 approval and contemplated the preparation and execution of a more formal agreement. The City
13 Council approved the terms of the settlement during a closed session meeting the following day,
14 September 26, 2017.

15 5. On October __, 2017, the parties executed a formal settlement agreement
16 ("Settlement Agreement") a copy of which is attached hereto as Exhibit 1. The Settlement
17 Agreement requires that Petitioners request dismissal of the current action with prejudice as to
18 themselves and without prejudice as to the putative class. It also requires the Court to retain
19 jurisdiction pursuant to Code of Civil Procedure section 664.6.

20 6. The highlights of the Settlement Agreement are as follows:

21 a) The City will provide refunds to water ratepayers either through water bill credits
22 or refund checks based on alleged overcharges during the class period and that obligation will
23 continue until the City adopts a new Tier 3 rate. Through August 2017, that amount is
24 approximately \$1,002,000. Although there are a number of factors that one could argue alter the
25 damages calculation, I believe that the amounts the City has agreed to credit/refund represent
26 close to 100% of the damages Petitioners would likely recover for class members applying
27 reasonable assumptions about the damages.
28

b) The City provided refund calculations which show that approximately \$755,000 will be refunded/credited for the period February 2016 through April 2017. (See Settlement Agreement, Ex. A). The City will provide updated refund/credit calculations for the remaining period within 30 days of the date a new Tier 3 rate is adopted. The City has been working towards adopting a new water rate resolution all year and it is my understanding that the City expects to adopt new rates (including a new Tier 3 rate) in January 2018.

c) Petitioners shall release only claims pertaining to the issues raised in the lawsuit as to the current water rate structure. The putative class members are not releasing any claims and those claims have been explicitly reserved. The parties are required to file a stipulation requesting dismissal of the entire action with prejudice as to Petitioners and without prejudice as to the putative class.

d) Petitioners' attorneys shall be paid \$150,000 for attorney's fees and costs from the funds created for ratepayers. This sum was negotiated at the mediation after all other terms were negotiated.

7. The Settlement Agreement represents all consideration given in exchange for Petitioners' request for dismissal. No other promises or agreements have been made.

8. I believe that in light of the fact that putative class members are obtaining a substantial recovery without having to provide any release of their claims and without the risk and delay of continued litigation, a dismissal of this class action lawsuit is fair and reasonable.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Diego, CA on October __, 2017.

Eric J. Benink